

08-CV-00797-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA STOOTTS EWING, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ADMINISTRATIVE SYSTEMS, INC.,

Defendant.

No.

C08 0797RAJ

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Brenda Stoots Ewing ("Plaintiff"), on behalf of herself and all others similarly situated, alleges as follows:

I. NATURE OF THE CASE

1. Plaintiff brings this class action against Defendant Administrative Systems, Inc. ("ASI") on behalf of herself and persons throughout the United States who have had their confidential personal data, including, *inter alia*, name, address, date of birth and Social Security Number (hereinafter "Personal Information"), disclosed by Defendant to unauthorized third parties at any time since December 29, 2007.



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CLASS ACTION COMPLAINT - 1

010053-J1 239931 V1

ORIGINAL

Summons Iss. SEAI7839

2. Plaintiff is seeking compensatory and punitive damages based on Defendant's general negligence and its violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.* Plaintiff also seeks restitution and injunctive relief under the FCRA to redress Defendant's unlawful invasion of the privacy rights of Plaintiff and the proposed Class.

3. As a consequence of Defendant's failure to protect their Personal Information, Plaintiff and the Class are now faced with the substantial risk that they will become victims of personal identity theft and thereby suffer financial loss and other significant harm. Indeed, Defendant's actions have already caused Plaintiff to incur the direct financial expense of enrolling with a private credit monitoring service to protect against personal identity theft stemming from Defendant's unauthorized disclosure of her Personal Information.

II. PARTIES

4. Plaintiff Brenda Stoots Ewing is a resident of Memphis, Tennessee and is a "consumer" as defined and protected by the FCRA.

5. Defendant Administrative Systems, Inc. is a licensed third-party administrator and registered broker-dealer located in Seattle, Washington. According to its Internet website: "Founded in 1990, ASI provides integrated and turnkey billing administrative solutions to numerous financial institutions. Our customers include insurance carriers, investment companies, and marketing organizations that specialize in the area of voluntary benefits." (<https://www.asibpi.com/about.asp>).

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over the federal claims herein pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the state common law claim herein under 28 U.S.C. § 1367. Further, this Court has subject matter jurisdiction over this nationwide class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the amount in controversy exceeds \$5 million, exclusive of interest and costs, and this is a class action in which some members of the Class are citizens of states different than Defendant.



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1 See 28 U.S.C. § 1332(d)(2)(A). This Court has personal jurisdiction over Defendant because
 2 ASI owns and operates a business located within the Western District of Washington and
 3 conducts substantial business throughout the United States.

4 7. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(a)(2) because a
 5 substantial part of the acts giving rise to Plaintiff's claims occurred in this District.

6 IV. FACTUAL BACKGROUND

7 8. Defendant ASI is a licensed third-party administrator that provides certain
 8 administrative services for its clients, which include insurance carriers such as AIG American
 9 General Life Insurance Company ("American General") and other financial services companies.

10 9. The services provided by ASI include processing applications for insurance
 11 coverage, issuing of insurance plans, managing premium billing and collection for insurance
 12 plans, responding to customer service requests, and other record-keeping matters. In performing
 13 such services, ASI is provided with Personal Information about individuals, including names,
 14 dates of birth, mailing addresses and Social Security Numbers ("SSN").

15 10. Upon information and belief, the Personal Information collected and maintained
 16 by ASI may also include bank account information provided by individuals for purposes of
 17 automatically paying insurance premiums and/or certain personal medical information provided
 18 by individuals applying for health insurance.

19 11. Defendant ASI's Internet homepage includes a Privacy Notice that states the
 20 following:

21 Your privacy is a high priority for us and will be treated with the
 22 highest degree of confidentiality. In order for us to provide the
 23 financial products and services we administer, we need to collect
 24 certain information from you. We want to emphasize that we are
 25 committed to maintaining the privacy of this information in
 26 accordance with the law. All personnel with access to personal
 information about our customers are required to follow this policy.

* * *



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Confidentiality and Security of Your Non-Public Personal Information

- We restrict access of non-public personal information about you to only those who need to know about that information to underwrite, process, service or market your accounts administered by Administrative Systems.
- We maintain physical, electronic, and procedural safeguards that comply with state and federal standards to guard your non-public personal information.

12. The services provided by ASI constitute the furnishing of “consumer reports” within the meaning of the FCRA, 15 U.S.C. § 1681a(d).

13. Plaintiff and the Class are “consumers” or “persons” as defined under the FCRA §§ 1681a(b-c).

14. Defendant ASI furnishes consumer reports to its business customers in interstate commerce and is a “consumer reporting agency” within the meaning of the FCRA, 15 U.S.C. § 1681a(f).

15. Consumer reports may be furnished to any person or entity only for limited permissible purposes, as narrowly defined in the FCRA, 15 U.S.C. § 1681b.

16. Plaintiff and the Class have a strong expectation of privacy and a privacy interest in their personal identifying information contained in the consumer reports sold, disclosed or distributed by ASI and other consumer reporting agencies.

17. Defendant failed to establish reasonable security precautions or maintain reasonable administrative procedures to prevent the sale, disclosure or distribution of sensitive Personal Information to unauthorized third parties.

18. During the relevant time period, ASI, without authorization or consent, disclosed Plaintiff’s and the Class members’ Personal Information to third parties. In so doing, ASI violated the FCRA and the privacy rights of Plaintiff and the Class who hold a reasonable



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1 expectation that their Personal Information shall be maintained in a secure and confidential
2 manner.

3 19. Plaintiff and the Class have been injured and damaged by the improper disclosure
4 of their sensitive Personal Information.

5 20. Defendant knows or reasonably should have known that the Personal Information
6 compiled by ASI constitutes consumer reports within the meaning of the FCRA and that those
7 reports were used for purposes other than the permissible purposes set forth under the FCRA.
8 Defendant acted willfully, recklessly and/or in conscious disregard for the rights of Plaintiff and
9 the Class.

10 21. Defendant breached its duty to prevent the disclosure of Plaintiff's and the Class'
11 Personal Information to unauthorized third parties.

12 22. Defendant, in reckless disregard of Plaintiff's and the Class's rights, disclosed
13 Plaintiff's and Class members' Personal Information to unauthorized third parties.

14 23. Plaintiff and the Class now face the real risk of having their personal identities
15 stolen or misused. Identity theft constitutes a real and growing threat and can severely harm the
16 credit standing and reputation of its victims.

17 24. Defendant also willfully, recklessly and/or in conscious disregard of Plaintiff's
18 and Class members' rights, failed to notify in a timely manner those consumers whose Personal
19 Information was improperly disclosed to unauthorized third parties. ASI did not begin to inform
20 those affected by the improper disclosure until up to two months after it discovered the improper
21 disclosure. Defendant's belated notice was incomplete and inadequate.

22 25. Plaintiff upon learning that her Personal Information was improperly disclosed,
23 enrolled with LifeLock, a leading provider of identity theft protection and credit monitoring
24 services, at a cost of \$110 per year. Plaintiff paid for one year of services upon enrollment and
25 arranged for automatic renewal whereby successive annual costs will be deducted from her
26 personal credit card.



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V. CLASS ACTION ALLEGATIONS

26. This action is brought on behalf of Plaintiff, individually and as a class action on behalf of all persons whose Personal Information was compromised and/or improperly disclosed as a result of Defendant's failure to comply with the FCRA and state common law. The Class excludes ASI and its officers, directors, agents or employees.

27. The Class is comprised of thousands of individuals, the joinder of whom would be impracticable. Disposition of the claims in a class action will provide substantial benefits to both the parties and the Court.

28. The rights of Plaintiff and each Class member were violated in a similar fashion based upon Defendant's uniform actions or omissions.

29. Questions of law and fact common to the Class predominate over questions which may affect individual Class members, including the following:

(a) whether ASI is a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(b) whether ASI acted with reckless disregard of Plaintiff's and Class members' rights by furnishing Plaintiff's and Class members' Personal Information to unauthorized third parties;

(c) whether ASI negligently violated the FCRA by furnishing Plaintiff's and Class members' Personal Information to unauthorized third parties;

(d) whether ASI violated the FCRA by failing to provide adequate security or protection for Plaintiff's and Class members' Personal Information;

(e) whether ASI failed to properly and timely notify Plaintiff and Class members about the improper disclosure of their Personal Information;

(f) whether ASI had a duty under common law to protect the Personal Information and privacy rights of Plaintiff and the Class;



(g) whether ASI negligently breached its duty to provide adequate security or protection for Plaintiff's and Class members' Personal Information;

(h) whether Plaintiff and Class members have been injured and, if so, the proper measure of damages; and

(i) whether ASI acted or refused to act on grounds generally applicable to Plaintiff and the Class, thereby making appropriate injunctive relief with respect to the Class as a whole.

30. Plaintiff will fairly and adequately represent and protect the interests of the Class in that she has no interest that is antagonistic to or that irreconcilably conflicts with those of the Class.

31. Plaintiff has retained counsel competent and experienced in the prosecution of class action litigation.

32. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiff's and Class members' claims. Plaintiff and the Class have suffered irreparable harm as a result of Defendant's negligent and unlawful conduct. The damages suffered by individual Class members may be relatively small, and thus few, if any individual Class members can afford to seek legal redress on an individual basis for the wrongs complained of herein. In the absence of a class action, Plaintiff and the Class will continue to suffer losses as a result of Defendant's unlawful conduct.

COUNT I

GENERAL NEGLIGENCE

33. Plaintiff incorporates the preceding paragraphs by reference and further alleges as follows:

34. Defendant ASI came into possession of Plaintiff's and the Class members' Personal Information and assumed a duty to exercise reasonable care in safeguarding and



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1 protecting such information from being compromised or improperly furnished to unauthorized
2 third parties.

3 35. Defendant ASI has an additional duty to timely inform Plaintiff and the Class if
4 their Personal Information has been compromised or improperly furnished to unauthorized third
5 parties.

6 36. Defendant ASI, through its acts or omissions, breached its duties to Plaintiff and
7 the Class by failing to exercise reasonable care in protecting and safeguarding Plaintiff's and
8 Class members' Personal Information and/or by improperly furnishing such Personal
9 Information to unauthorized third parties.

10 37. Defendant ASI, through its acts or omissions, breached its duty to timely inform
11 Plaintiff and the Class that their Personal Information had been compromised or improperly
12 furnished to unauthorized third parties.

13 38. But for ASI's negligent and wrongful breach of duties owed to Plaintiff and the
14 Class, the Personal Information at issue would not have been compromised or improperly
15 furnished to unauthorized third parties

16 39. As a direct result of ASI's negligence, Plaintiff and the Class suffered actual
17 damages, including, *inter alia*, expenses for credit monitoring and other protective measures,
18 anxiety, emotional distress, loss of privacy, and other economic and non-economic harm.

19 **COUNT II**

20 **WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT**

21 40. Plaintiff incorporates the preceding paragraphs by reference and further alleges as
22 follows:

23 41. This is a claim for willful violation of the Fair Credit Reporting Act ("FCRA"),
24 15 U.S.C. § 1681 *et seq.*, as amended by the Fair and Accurate Credit Transactions Act of 2003
25 ("FACTA").
26



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1 42. The stated purpose of the FCRA is “to require that consumer reporting agencies
2 adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel,
3 insurance, and other information in a manner which is fair and equitable to the consumer, with
4 regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.”
5 15 U.S.C. § 1681(b).

6 43. Under the FCRA § 1681a(f), “[t]he term ‘consumer reporting agency’ means any
7 person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in
8 whole or in part in the practice of assembling or evaluating consumer credit information or other
9 information on consumers for the purpose of furnishing consumer reports to third parties, and
10 which uses any means or facility of interstate commerce for the purpose of preparing or
11 furnishing consumer reports.”

12 44. Under the FCRA § 1681a(d)(1), “[t]he term ‘consumer report’ means any
13 written, oral, or other communication of any information by a consumer reporting agency
14 bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general
15 reputation, personal characteristics, or mode of living which is used or expected to be used or
16 collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s
17 eligibility for,” *inter alia*, credit or insurance.

18 45. Plaintiff and the Class are “consumers” or “persons” as defined under the FCRA
19 §§ 1681a(b-c).

20 46. Defendant ASI is a “consumer reporting agency” as defined under the FCRA §
21 1681a(f).

22 47. The Personal Information maintained by ASI constitutes “consumer reports” as
23 defined under the FCRA § 1681a(d)(1).

24 48. As a consumer reporting agency, ASI is required under the FCRA § 1681e to
25 maintain reasonable procedures designed to limit the furnishing of consumer reports for the
26 permissible purposes stated under the statute.



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49. Defendant willfully failed to comply with the FCRA by knowingly and intentionally disclosing consumer reports to unauthorized third parties, in conscious disregard of Plaintiff's and Class members' rights under the FCRA.

50. As a direct result of ASI's willful violation of the FCRA, Plaintiff and the Class suffered actual damages, including, *inter alia*, expenses for credit monitoring and other protective measures, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm.

COUNT III

NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT

51. Plaintiff incorporates the preceding paragraphs by reference and further alleges as follows:

52. This is a claim for negligent violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*, as amended by the Fair and Accurate Credit Transactions Act of 2003 ("FACTA").

53. Defendant ASI provided consumer reports to unauthorized third parties by disclosing, selling or distributing Plaintiff's and Class members' Personal Information to unknown persons or entities who have no legitimate interest in or right to such sensitive data.

54. Defendant ASI disclosed such Personal Information without any permissible purpose under the FCRA.

55. Defendant ASI was negligent in failing to maintain reasonable procedures designed to secure and maintain the privacy and confidentiality of Plaintiff's and Class members' Personal Information and to limit the furnishing of such information for the permissible purposes set forth in the FCRA.

56. As a direct result of Defendant ASI's negligent violation of the FCRA, Plaintiff and the Class suffered actual damages, including, *inter alia*, expenses for credit monitoring and



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1 other protective measures, anxiety, emotional distress, loss of privacy, and other economic and
2 non-economic harm.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated,
5 respectfully requests that the Court:

6 (a) certify this matter as a class action pursuant to Rule 23(b)(2) and 23(b)(3)
7 of the Federal Rules of Civil Procedure and appoint Plaintiff as Class Representative and the
8 undersigned as Class Counsel;

9 (b) enter judgment in favor of Plaintiff and the Class against Defendant under
10 the legal theories asserted herein;

11 (c) order ASI to enact comprehensive safeguarding measures to protect
12 consumers from future improper disclosure of sensitive Personal Information;

13 (d) direct ASI to thoroughly investigate and provide a full accounting of all
14 persons potentially affected by the improper disclosure of Personal Information at issue;

15 (e) award monetary relief to redress any actual or consequential damages
16 suffered by Plaintiff and the Class in an amount to be determined by the jury;

17 (f) award punitive damages pursuant to the FCRA, 15 U.S.C. § 1681n(2);

18 (g) award nominal damages under the FCRA 15 U.S.C. § 1681n or § 1681o,
19 or as otherwise permitted under state law, in an amount to proven at trial;

20 (h) direct ASI to create a fund to compensate Plaintiff and the Class for credit
21 monitoring expenses and other personal identification theft prevention measures, including the
22 appointment of an independent advocate or advisory panel to act in the interests of the Class and
23 administer the fund;

24 (i) award attorneys' fees, expenses and costs of bringing this action;

25 (j) award pre-judgment and post-judgment interest at the maximum rate
26 allowed by law; and



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(k) award such other additional relief the Court deems appropriate.

VII. JURY TRIAL DEMANDED

Plaintiff, on behalf of herself and the Class, respectfully demands a trial by jury on all issues so triable.

DATED: May 21, 2008.

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